

1. **PARTIES**

The Montana Department of Corrections (DEPARTMENT) and **Diamond Construction, Inc. (CONTRACTOR)** enter into this Contract (08-069-YSD). The parties names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Youth Services Division
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

Diamond Construction, Inc.
2905 North Montana Avenue, Suite 200
PO Box 5987
Helena, MT 59601
(406) 442-2450

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. **DUTIES/RESPONSIBILITIES OF THE CONTRACTOR**

CONTRACTOR agrees to provide the following goods and/or services:

- A. Provide all labor and materials, as specified in Estimate #1755 dated 3/25/08 (attached), necessary to complete the kitchen remodel at Riverside Youth Correctional Facility.

3. **COMPENSATION/BILLING**

DEPARTMENT shall compensate CONTRACTOR for successful delivery of the services (or goods) provided pursuant to Section 2 in the following manner:

- A. DEPARTMENT shall pay CONTRACTOR an amount not to exceed **forty five thousand seven hundred fifty and 00/100 Dollars (\$45,750.00)** for the goods and/or services described in Section 2 above.
- B. DEPARTMENT agrees to pay CONTRACTOR within 30 business days following receipt of a correct invoice.
- C. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- D. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. **AGENCY ASSISTANCE**

To the extent possible, CONTRACTOR shall use its' own equipment in providing the goods/services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, work space within a correctional facility, and phone service (e.g., Montana State Prison does not allow cellular or digital phones within the facility).

5. TIME OF PERFORMANCE

This Contract shall take effect upon receipt of final signature and shall terminate upon successful completion of kitchen remodel and acceptance by Riverside Youth Correctional Facility staff, unless terminated earlier in accordance with the terms of this Contract.

6. LIAISON AND NOTICE

- A. Dan Kissner, Operations Manager (406-225-4502), 2 Riverside Road, Boulder, MT 59632 or successor serves as DEPARTMENT'S liaison.
- B. Phil Vinton, Project Manager (406-495-7155), 2905 North Montana, Suite 200, Helena, MT 59601 or successor serves as CONTRACTOR'S liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Contracts and Facilities Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. HOLD HARMLESS AND INDEMNIFICATION

- A. CONTRACTOR agrees that he is financially responsible (liable) for any audit exceptions or other financial loss to DEPARTMENT due to the negligence, intentional acts, or failure for any reason to comply with terms of this Contract.
- B. CONTRACTOR agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of CONTRACTOR and/or its agents, employees, representatives, assigns, and subcontractors.

10. INSURANCE

- A. **General Requirements:** CONTRACTOR shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Primary Insurance: CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by DEPARTMENT. At the request of DEPARTMENT either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverage's must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverage's, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

- B. **Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, property damage, premises, operations, independent contractor's protective, products and completed operations, and broad form property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

- i. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insured's; for liability arising out of activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.

- C. **Specific Requirements for Automobile Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insured's for automobiles leased, hired, or borrowed by CONTRACTOR.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, sub-contract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligations of this Contract and any transferee or sub-contractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

14. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

15. COMPLIANCE WITH LAWS

CONTRACTOR must comply with all applicable federal and state law including, but not limited to the prevailing wage laws, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

16. TERMINATION AND DEFAULT

- A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.

- C. DEPARTMENT, at its sole discretion, may terminate this CONTRACT if available funding is reduced.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

17. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

18. FREEDOM FROM DISCRIMINATION

All parties of this Contract agree that all hiring must be done on the basis of merit and qualifications. There may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person or persons performing the Contract. However, construction work within an Indian reservation requires that a hiring preference be given to Indian residents of said reservation who have substantially equal qualifications. This preference will apply unless federal law specifically prohibits residency preference.

19. LICENSURE

CONTRACTOR agrees to provide copies of current licenses and certifications that register CONTRACTOR and any associates covered under this Contract.

20. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the agreement.

21. SEVERABILITY

If any single part, or parts, of this Contract are determined void, the remaining parts remain valid and operative.

22. PERMITS/NOTICES/FEEES

CONTRACTOR shall secure and pay for all permits and inspections; give all notices; pay all taxes and fees; and comply with all laws, ordinances, rules, regulations, and lawful orders bearing on the performance of the work.

23. LABOR/MATERIALS/EQUIPMENT

Unless otherwise specified, CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction, and services necessary for the proper execution

and completion of the work. All material provided shall be new and in good condition. All workmanship shall be of good quality and in accordance with acceptable standards of the respective trades.

24. PREVAILING WAGE

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, and falls under the category of construction services. The booklet containing Montana's 2007 Rates for Building Construction is attached.

24. CONTRACTOR REGISTRATION

Construction contracts greater than \$2,500.00 require Contractors to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA **prior** to Contract execution. A copy of the registration certificate must be provided to DEPARTMENT. **CONTRACTOR'S registration number is #6626 - expiration date of September 25, 2009.**

25. GROSS RECEIPTS TAX

In compliance with 15-50-206 MCA, DEPARTMENT will withhold 1% of all payments due CONTRACTOR for Contracts over \$5,000. CONTRACTOR is also required to withhold 1% of all payments due to its sub-contractors who perform work greater than \$5,000 under this Contract.

CONTRACTOR shall utilize the required forms and notify the Department of Revenue of the amount withheld.

26. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts and Facilities Management Bureau, PO Box 201301, 1539 11th Avenue, Helena, Montana 59620-1301.

SIGNATURE

DEPARTMENT

CONTRACTOR



Steve Gibson, Administrator
Youth Services Division




Phil Vinton, Project Manager
Diamond Construction, Inc.

5-19-08
Date

5/19/08
Date

Approved for Legal Content by:



Legal Counsel
Department of Corrections

5/16/08
Date



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www.diamondconstruction.com

March 25, 2008

Mr. Rob Stapley
Purchasing Agent
Department of Corrections
Helena, MT 59620

RE: Kitchen Remodel – Riverside Youth Correctional Facility

Dear Mr. Stapley,

Diamond Construction, Inc. (DCI) is pleased to provide the following quotation for the above reference project.

Inclusions:

- Remove sheathing on south wall for plumbing access
- Rough-in plumbing for equipment specified
- New FRP over water resistant gypsum board at sheathing removal
- Revision of finned tube heater & infill of window at new fume hood
- Paint north, east and west walls
- Supply & install 2 new type 1 condensate hoods – one for the kitchen/stove (8'x4'18") & one for the dishwasher (3'x3')
- Stainless steel backsplash at new kitchen hood
- Electrical including installation of new 400 amp 3 phase 120/208 service, new 400 amp kitchen panel, new 150 amp single phase feeder to existing panel, demo of existing electrical service & connection to kitchen equipment as indicated.
- Minor sidewalk demo and patch for new electrical service
- Due to the uncertainty of the fixtures & fittings of the used equipment, an allowance of \$1,035 for final plumbing hook-up has been included – this cost includes 12 man-hours and \$200 in material
- Building permit, prevailing wage rates & 1% tax

Exclusions:

- Purchase, supply, unloading or moving of all kitchen equipment with exception to the condensate hoods
- All fire suppression and any special wall or ceiling construction
- Make-up air unit
- Flooring/ceiling removal, revision or patch
- NWE Fees
- Temp. utilities and facilities
- Bonding or insurance other than standard workers comp. & liability.
- Asbestos, lead paint, & hazardous materials of any kind

Base Bid: Forty-five Thousand Seven Hundred Fifty (\$45,750.00)

*menda
mg/indt@*

*6626
4/23/09*